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**MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN**

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✉ [pftutelo@mdwecg.com](mailto:pftutelo@mdwecg.com)

ATTORNEYS FOR DEFENDANT – Township of Jackson, New Jersey

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**\*\* ELECTRONICALLY FILED \*\***

AGUDATH ISRAEL OF AMERICA, a New  
York non-profit corporation, and WR  
PROPERTY LLC, a New Jersey limited  
liability company,

Plaintiffs

v.

TOWNSHIP OF JACKSON, NEW JERSEY

Defendant

CASE NO.: 3:17-cv-03226-MAS-DEA

Civil Action

**DECLARATION OF  
PAULINE F. TUTELO, ESQ**

PAULINE F. TUTELO, ESQ., of full age, under penalty of perjury, declares as follows:

1. I am special counsel at Marshall Dennehey Warner Coleman & Goggin in this litigation. As such, I am fully familiar with the facts herein.
2. I submit this declaration in support of defendant, Township of Jackson, New Jersey's Opposition to Plaintiffs' Motion to Enjoin the Township of Jackson from Continuing to Spoliate Evidence and for Sanctions.

3. On March 26, 2019, the declarant received a telephone call from Donna Jennings, Esq., regarding an e-mail from the Township, received by riseupocean@gmail.com, in response to a OPRA request.
4. On March 26, 2019, the declarant received a copy of the e-mail which stated that the documents requested had been destroyed and could therefore not be provided. See Exhibit A.
5. On March 26, 2019, the declarant immediately contacted the Township to determine the status of the documents related to this action.
6. On March 28, 2018, the declarant was advised by Township counsel that the documents had not been destroyed but were removed from the server and kept in .PDF format. See Exhibit B.
7. Soon thereafter, the declarant contacted Donna Jennings, Esq., and advised that the documents were not destroyed and were available in .PDF format.
8. On April 12, 2019, plaintiffs' filed the within motion. See Docket 32-1.
9. Attached hereto as Exhibit C is the Certification of Janice Kisty, Jackson Township's Town Clerk, in support of the Township's opposition to plaintiffs' motion.

**DECLARATION**

I hereby declare under penalty of perjury that the foregoing statements are true and correct pursuant to 28 U.S.C. §1746.

By: /s/ Pauline F. Tutelo  
PAULINE F. TUTELO, ESQ.

Dated: May 6, 2019

# **EXHIBIT A**

**Tutelo, Pauline F.**

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**From:** Jennings, Donna <djennings@wilentz.com>  
**Sent:** Tuesday, March 26, 2019 11:24 AM  
**To:** Tutelo, Pauline F.; 'Sieglinde Rath'  
**Subject:** Jackson  
**Attachments:** ATT00001.htm; ATT00002.htm; ATT00003.htm; Administration Records Retention 2009-2016.pdf; Council Records Retention 2012-2015.pdf; Oros Bais Yaakov, girls schools, and schools 1-1-14 through 1-1-15.pdf  
  
**Categories:** Oros

Pauline

Here is the response below plus attachments.

Best regards,

Donna

----- Original message -----

From: Danielle Sinowitz <[dsinowitz@jacksontwpnj.net](mailto:dsinowitz@jacksontwpnj.net)>  
Date: 3/26/19 10:20 AM (GMT-05:00)  
To: rise up <[riseupocean@gmail.com](mailto:riseupocean@gmail.com)>  
Subject: OPRA Response

Dear Rise Up:

Please accept this as my official response to your OPRA (copy attached). Your records requested have been destroyed under general correspondence as per approval from the NJDARM. Attached please the Authorization from Records Disposal approved on 3/6/19(2009-2016) for Administration. Also Please find Authorization from Records Disposal approved on 1/31/18(2014), 5/15/19(2015) for Council.

Thank you!

**Danielle Sinowitz**

Clerk I  
Jackson Township  
95 West Veterans Highway  
Jackson, NJ 08527  
Tel: 732-928-1200 ext. 1203  
Email: [dsinowitz@jacksontwpnj.net](mailto:dsinowitz@jacksontwpnj.net)

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This email has been scanned for email related threats and delivered safely by Mimecast.  
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# **EXHIBIT B**

**Tutelo, Pauline F.**

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**From:** Robin LaBue <rlb@gm-law.net>  
**Sent:** Thursday, March 28, 2019 12:12 PM  
**To:** Tutelo, Pauline F.; Mankoff, Howard B.  
**Cc:** Jean Cipriani  
**Subject:** FW: Oros/Agudath

The documents that were destroyed were the original emails. The documents have been preserved in PDF format. It was confusion on the behalf of the Township Clerk. They are inundated with requests. However, although the original "documents" were destroyed, we still have them.

Robin La Bue, Esq.  
Gilmore & Monahan, P.A.  
10 Allen Street, 4th Floor  
P.O. Box 1540  
Toms River, NJ 08754-1540

732-240-6000 (telephone)  
732-244-1840 (facsimile)  
[rlb@gm-law.net](mailto:rlb@gm-law.net)

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**From:** Jean Cipriani <jlc@gm-law.net>  
**Date:** Thursday, March 28, 2019 at 12:09 PM  
**To:** Robin LaBue <rlb@gm-law.net>  
**Subject:** FW: Oros/Agudath

Jean L. Cipriani, Esq.  
Gilmore & Monahan, P.A.  
10 Allen Street, 4th Floor  
P.O. Box 1540  
Toms River, NJ 08754-1540

732-240-6000 (telephone)  
732-244-1840 (facsimile)  
[jlc@gm-law.net](mailto:jlc@gm-law.net)

---

**From:** Pauline Tutelo <PFTutelo@MDWCG.com>  
**Date:** Thursday, March 28, 2019 at 11:49 AM  
**To:** "Jean L. Cipriani" <jlc@gm-law.net>

Cc: "HBMankoff@mdwcg.com" <HBMankoff@MDWCG.com>

Subject: Oros/Agudath

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jean:

[REDACTED]

Thanks so much for your help!

Best,

Pauline

<b>MARSHALL DENNEHEY</b> <b>WARNER COLEMAN &amp; GOGGIN</b> <b>ATTORNEYS-AT-LAW</b> PA NJ DE OH FL NY	
<b>Pauline F. Tutelo</b> <i>Attorney at Law</i> <a href="#">bio</a>   <a href="#">e-mail</a>   <a href="#">website</a>	425 Eagle Rock Ave. Suite 302 Roseland, NJ 07068 Direct: (973) 618-4146 Main: (973) 618-4100 Fax: (973) 618-0685

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# **EXHIBIT C**

**41341.00105-HBM**

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**MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN**

By: Howard B. Mankoff, Esq.

**Attorney I.D. No. 021971981**

By: Pauline F. Tutelo, Esq.

**Attorney I.D. No. 025961996**

By: Michelle N. Michael, Esq.

**Attorney I.D. No. 240262018**

425 Eagle Rock Avenue, Suite 302

Roseland, NJ 07068

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✉ hbmankoff@mdwcg.com

✉ pftutelo@mdwcg.com

✉ mnmmichael@mdwcg.com

ATTORNEYS FOR DEFENDANT – Township of Jackson, NJ and Jackson Township Zoning Board of Adjustment

OROS BAIS YAAKOV HIGH SCHOOL,

Plaintiff

v.

TOWNSHIP OF JACKSON, N.J. and  
JACKSON TOWNSHIP ZONING BOARD  
OF ADJUSTMENT,

Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: OCEAN COUNTY  
DOCKET NO.: OCN-L-2981-14

Civil Action

**CERTIFICATION OF**  
Janice KistyI, Janice Kisty, hereby certify as follows:1. I am the Township Clerk for Defendant The Township of Jackson, NJ  
(Township). I make this Certification based upon my personal knowledge.2. I have been employed with the Township for 19 years. I have acted as the Twp. Clerk  
for 4 months.  
~~years.~~3. I submit this certification in opposition to the Plaintiffs' allegation that the Township  
destroyed evidence.

4. In response to one of approximately 700 OPRA requests from anonymous parties, who are clearly working with the Plaintiffs, the Township Clerk inadvertently advised the requestor that records responsive to the OPRA request were destroyed. Complete copies of the records were maintained in PDF format, and the requestor was so advised. The Township is well aware of its obligation to preserve relevant documents and evidence.

5. The Defendants note that despite the Plaintiffs' claim that they do not know the identity of the individuals flooding the Township with OPRA requests, which are interfering with the Clerk's ability to provide needed services to Township residents, the Plaintiffs' attorney has filed a motion in connection with the anonymous OPRA requests.

6. No documents have been deleted in connection with this litigation.

7. The Township will ensure that no documents are ~~are~~ destroyed until the conclusion of this litigation.

I hereby certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements are willfully false, I am subject to punishment.

BY: Janice Kisty

Dated: 5/6/19